

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3095 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SMT. MAYABA WD/O MAHOBATSINHJI HANUBHA

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR YS MANKAD for the Petitioner

MR MUKESH PATEL for Respondent No. 1 & 3

MR KETAN H DAVE for Respondent no.2.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/09/96

ORAL JUDGEMENT

1. The petitioner is a widow of late Shri Mohabatsinhji, a police constable in the police Department of the State of Gujarat and he was in Dist. Kutch. He was appointed as a police constable on 25th February, 1950. At the age of 45 years he died of T.B.. Due to his ailment which has resulted in his death, he was on leave from 21st June, 1972 to 25th September, 1972 and then from 26th September, 1972 to 10th July, 1973.

He was ordered to be retired on 11-7-1973 on invalid pension. After his retirement he expired on 26th December, 1978. The invalid pension was fixed at Rs.51/- plus temporary increase. After his death, the invalid pension was fixed at Rs.53/- plus temporary increase with effect from 17-9-1974. The determination of his pension has been made on the basis that on 31st December, 1972, late Shri Mohabatsinhji was in the pay-scale of 150-175. It is not in dispute that after his death, the petitioner has been given the family pension. The petitioner has come up with a case that from 1-1-1973, the payscale 150-175 has been revised to 300-430. On 1st January, 1973, the husband of the petitioner was in service and as such his pay should have been revised in the revised pay-scale and arrears should be given to her of the same till 26th December, 1978 and thereafter his pension should have been fixed in accordance with the revised pay as arrived on 1-1-1973. In his life-time, Mohabatsinhji made an application to the authorities for getting revised pay and the revised pension and gratuity through proper channel. The Accounts Officer of the respondent no.2 under its letter dated 29th September, 1977 addressed to the S.P. Western Railway declined that claim on the ground that the deceased Mohabatsinhji was on continuous leave from 21st June, 1972 to 10th July, 1973 i.e. upto the date of his retirement. The petitioner has come up with a case that late Mohabatsinhji was on earned leave upto 10th July, 1973 and he was fully paid the salary for the said period. The further correspondence has been made in this respect. It comes out from the fact that the claim of the petitioner was not accepted and the reference has been made to Rule 46-F(4) of the Bombay Civil Service Rules. Hence this Special Civil Application filed by the petitioner.

2, The counsel for the respondent no.2 submitted that though earlier its officer has taken the decision that late Mohabatsinhji is not entitled for the revised pay scale, but now on such matter the decision has to be taken by the Government and nothing is to be done by the respondent no.2 in the matter. The counsel for the respondent no.2 fairly conceded that the earlier order made by its officer against the petitioner has not been withdrawn.

3. The reply has been filed by the respondent no.1 and in clause K of Para 2, it has been stated that,

"The police authorities at Vadodara prepared the pension papers according to the revised pay

scales and forwarded the same to the office of the Accountant General. The Accountant General did not accept the proposal on the ground that as the deceased had been on leave for a period of more than six months (21-6-1972 to 10-7-1973) the revision of pay scales was not applicable in his case. The matter was referred to the State Government. The State Government initially took a sympathetic view but ultimately agreed with the Accountant General and the application of the petitioner was rejected."

In reply, the reference has been made to Rule 46-A of the Revised Pension Rules, 1950, but the counsel for the respondents have not produced complete text of the Rules. From the reading of the aforesaid averments made in the reply it gives out that at one point of time the State Government took a sympathetic view but ultimately agreed with the Accountant General and rejected the application. The counsel for the Accountant General, on the other hand stated that it has nothing to do in this matter and decision has to be taken by the Government. In view of this defence of the Accountant General, the respondent no.2 the State Government should have decided the matter of the petitioner independently and ignoring the opinion which has been sent from the office of respondent no.2. The State Government was the only competent authority as per the case of respondent no.2. then whatever opinion by it (respondent no.2) is certainly an extraneous consideration. The matter deserves to be reconsidered after excluding that consideration.

4. In the result, this Special Civil Application deserves to be accepted in part and the respondent no.1 is directed to consider afresh the matter of the petitioner for giving of the revised pay-scale to the deceased husband of the petitioner from 1-1-1973 and benefit of the revision of the pension on the basis of the revised pay scale. The matter may be considered within a period of four months from the date of receipt of certified copy of this order. In case the respondent no.1 considers that the benefits are to be given to the petitioner as prayed then she will be entitled for all the consequential benefits which follows there from and those benefits should be given to her within a period of three months next thereafter. In case the respondent no.1 holds otherwise, it is expected of it to pass a reasoned order and a copy of the same may be sent to the petitioner by registered post. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-